

1415820 (Migration) [2016] AATA 3797 (27 April 2016)

DECISION RECORD

DIVISION:	Migration & Refugee Division
REVIEW APPLICANT:	Mr Jinwang Huang
VISA APPLICANTS:	Mrs Xiulin LU Mr Wei Lin
CASE NUMBER:	1415820
DIBP REFERENCE(S):	2013024841
MEMBER:	Rania Skaros
DATE:	27 April 2016
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decisions not to grant the visa applicants Partner (Provisional) (Class UF) visas.

Statement made on 27 April 2016 at 10:37am

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration on 18 August 2014 to refuse to grant the visa applicants Partner (Provisional) (Class UF) visas under s.65 of the *Migration Act 1958* (the Act).
2. The first named visa applicant (the visa applicant) applied for the visa on 28 October 2013 on the basis of their relationship with their sponsor, the review applicant. At that time, Class UF contained only one subclass: Subclass 309 Partner (Provisional). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria. Relevantly to this matter the primary criteria include cl.309.211.
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.309.211 because the delegate was not satisfied that the parties are in a genuine spousal relationship.
4. The review applicant appeared before the Tribunal on 2 February 2016 to give evidence and present arguments. The Tribunal also received oral evidence from the visa applicant and Ms Kinsey, the review applicant's niece.
5. The review applicant was represented in relation to the review by his registered migration agent.
6. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

7. The issue in the present case is whether the visa applicant meets the requirements in c.309.211.
8. The visa applicant is a 50 year old Chinese national. She was previously married and had two sons from that relationship. She divorced her former spouse in 2006. Her youngest son is the secondary applicant.
9. The review applicant is 58 years of age. He has had three previous marriages. His last marriage ended in divorce in April 2012. The review applicant is the holder of a permanent residence visa.
10. The visa applicant travelled to Australia as the holder of a Subclass 580 Student Guardian visa to join her son, the secondary visa applicant, who was in Australia on a student visa. The visa applicant departed Australia on 20 October 2013 as the holder of a bridging visa E.
11. The parties claim to have met in October 2012 by chance on a train. They claim to have spent time together in a hotel and to have started living together in March 2013. The parties married on 11 August 2013.

WHETHER THE PARTIES ARE IN A SPOUSE OR DE FACTO RELATIONSHIP

12. Clause 309.211(2) and 309.221 require that at the time the visa application was made, and at the time of this decision, the visa applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the visa applicant claims to be the spouse of the review applicant who is a permanent resident.
13. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as husband and wife to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion as to these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and review applicant's household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.

ARE THE PARTIES VALIDLY MARRIED?

14. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship. The visa applicant and review applicant married in Australia on 11 August 2013. There is nothing before the Tribunal to suggest that the marriage is not valid. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

ARE THE OTHER REQUIREMENTS FOR A SPOUSAL RELATIONSHIP MET?

15. In assessing whether the parties were in an exclusive, genuine and continuing spousal relationship at the time of application, the Tribunal has had regard to all of the evidence before it, including information provided to the Department and to the Tribunal, evidence provided by the parties at the Departmental interview, which is detailed in the decision record, and the oral evidence of the parties and witness provided at the hearing.
16. The documents provided to the Department in support of the application relevantly included, the marriage certificate, relationship statement, telephone records, funds transfer documents, cards addressed to the parties and photographs of the parties together and with other people.
17. In the relationship statement, dated 22 October 2013, which was signed by the visa applicant and review applicant, it was noted that the parties met on a train in October 2012 and that the review applicant asked the visa applicant for her mobile phone number. The review applicant called the visa applicant on her mobile for almost two months, October and November 2012, and finally dated her successfully. On 2 December 2012 he took her to Sydney Olympic Park to see the motor show. They met up with each other twice a week and on 9 December 2012 they spent their first night together at a hotel. On 3 March 2013 the review applicant moved in with the visa applicant at Merrylands. After living together for some time they were sure of their relationship and decided to get married. They married on 11 August 2013 and had a celebration party at Auburn RSL that was attended by 40 people.
18. The parties were interviewed by an officer of the Department in June 2014. The decision record, a copy of which was provided the Tribunal, detailed a number of concerns regarding the parties' evidence, including, inconsistencies about their first meeting, experiences they claimed to have had together, knowledge of each other's friends and their family and friend's

knowledge of the relationship. The decision record also detailed information obtained from third parties, including relatives, which indicated they did not have much knowledge about the parties' relationship and that the visa applicant sometimes stayed at the home of her former spouse's parents. The decision record also noted the limited evidence provided in respect of the parties' communication and cohabitation. A number of these concerns, together with other concerns that arose out of the evidence at the hearing, were put to the review applicant at the hearing for comment, and are discussed in detail further below.

19. On review, the Tribunal received a number of additional documents, including, funds transfer record dated July 2015 and January 2016, employment reference for the review applicant, travel itinerary for the review applicant evidencing his travel to China in 2014 and 2015, photographs of the parties together and with family and friends in China, China mobile records dated from September 2014 to March 2015, a number of declarations on 888 forms and statements from persons in China stating that the parties are married and that their relationship is genuine, and mobile phone records, from June 2014 to October 2014 in the review applicant's name indicating the Merrylands address, and from March 2015 to January 2016 indicating the Fairfield address.
20. At the hearing, the review applicant gave evidence that he is employed as a machine operator and that he has been working for the same employer since March 2009. He said that he currently resides in Fairfield and has been at that address since October 2014. He shares the premises with a number of people from his hometown in China. Prior to that he lived in Merrylands with the visa applicant. He said that he resided at the Merrylands address from March 2013 until October 2014. He showed the Tribunal his photo ID card. The Tribunal observed that address indicated on that card is Cabramatta and that the label on the back showed his Fairfield address. The Tribunal noted that there was no evidence on the card indicating that he had resided in Merrylands. He stated that underneath the current address label there is another label which indicates the Merrylands address. The Tribunal observed that there appeared to be other labels but could not confirm the information on them. The Tribunal expressed its concern that there was limited evidence of his claimed residence at Merrylands with the visa applicant. The review applicant stated that he moved there with the visa applicant on 3 March 2013 and that she was the lessee and he just moved in with her because they were in love. He referred the Tribunal to copies of his mobile phone bills. The Tribunal noted that the bills showing the Merrylands address were from October 2013 which was around the time the visa applicant departed Australia.
21. The review applicant gave evidence about the history of his relationship with the visa applicant. He told the Tribunal they met on a train when she got on at Merrylands station. He was on the way to work. He noticed that she spoke the same local dialect and approached her. He said she worked as a cleaner and worked at different places every day. He was not sure at what station she got off at on that day. He got off at Granville, which is where he normally gets off. The Tribunal asked the applicant about the time it took the train to get from Merrylands Station to Granville. He said just a few minutes and on that occasion they just told each other where they were from. He said a few days later they met again. He said on the second occasion he got off at a station far away and asked for her phone number and if she would like to go out on Saturday. He told her they could be good friends and tried to make her his girlfriend. He said they exchanged telephone numbers and started to communicate with each other.
22. The Tribunal asked the review applicant how they recorded each other's telephone numbers. He said he is not sure how to record a number on the telephone but that the applicant knows how to do it. When asked how they recorded each other's telephone numbers that day, he said she recorded his number on her telephone. The Tribunal asked him how he recorded her telephone number, he said he could not recall because it was a long time ago. The Tribunal asked him if he recalls whether the applicant had given him her number on that

occasion, he said she did. He said that day he had a pen on him and used the pen to record her number. He said he then called her on Saturday, which was his day off, and invited her to visit his place. He said she went to Cabramatta and they had lunch together. The Tribunal asked the review applicant about the first time he met up with visa applicant after they exchanged telephone numbers, he said she came to visit him at the house where he was living. When asked how many days after they exchanged telephone numbers they had met up, he said just a few days. The Tribunal asked if it was his evidence that she had gone to his house in Cabramatta only a few days after they exchanged telephone numbers, he said yes, but she did not know how to go to his place so she got off at Cabramatta station and his sister-in-law went to pick her up. The Tribunal asked the applicant about the next time they met up with each other. He said they met at Olympic Park. They went to watch the swimming but ended up watching car racing. He said he did not check his watch and does not know when they finished. The Tribunal asked the review applicant about the period of time between when the visa went to his house at Cabramatta and when they went to Olympic Park. He said maybe two or three weeks.

23. The Tribunal asked the review applicant about when they next met up after the trip to Olympic Park. He said one week later they got strong feelings for each other and went to a hotel together. The hotel was somewhere in Cabramatta but he does not know the name. He said the first time they did not stay overnight. They just had some fun and went home because they had work the next day. When asked what time he went home, he said he was not sure. He said his niece Dana had taken them there and his sister-in-law, Suyi Zheng, picked them up, though he is not absolutely sure. They went there after lunch at about one or two o'clock in the afternoon. He said they went to the hotel on 9 December 2012. He then said that it was the first time they went but they also went another time to a hotel. When asked when that was, he said one week later. He could not recall the name of the hotel but said it was nearby. He said his niece drove him there and the next morning they went home by themselves.
24. The Tribunal asked the review applicant about his and the visa applicant's decision to marry. He said that he proposed to her a number of times and they discussed marriage. He said he asked her to marry him in about June 2013. When asked what the applicant's response was, he said the first time she told him not to rush things. He said he wanted to marry her and have a formal family and so he tried to push her to agree. He said their relationship developed since they started living together and he proposed to her every night. The Tribunal asked him when she accepted his proposal, he said he asked her a few times and about two or three days later she agreed.
25. The Tribunal also had the opportunity to take evidence from the visa applicant. She told the Tribunal that she had known the review applicant since October 2012 and they married in August 2013. They lived together for six months and decided to marry. She told the Tribunal that there was no formal proposal. They had already been living together for six months, had strong feelings for each other, were in love and decided to marry. She told the Tribunal that she first met the sponsor on the train but could not remember what day it was. She was travelling to work with a colleague. They exchanged telephone numbers and first went out together on 2 December 2012 to Olympic Park to watch the motor racing. The Tribunal asked the applicant about how they exchanged telephone numbers, she said she did not think about him but he kept calling her. The Tribunal asked her again how they recorded each other's telephone numbers, she said she did not take his number. She then said that he had taken her number and kept calling her. When asked how he recorded her telephone number when she gave it to him, she said he entered it on his mobile phone under the nickname of Ah Ling.
26. The Tribunal asked the visa applicant about the first time she and the review applicant decided to meet up with each other. She said the first time they went out together was to

Olympic Park. When asked if they had met up prior to the outing at Olympic Park, she said that they occasionally saw each other at the train station on the way to work. When asked about when they had next met up, she said at his home on 9 December 2012 to have lunch. She said after lunch Dana, the sponsor's sister-in-law, took them to a hotel. She told the Tribunal that they left the hotel at 6 pm on that occasion and that Dana had picked them up. She then said that the following week they went to the hotel again but the second time decided to stay overnight. She said no one picked them up on that occasion and they just walked home.

27. The Tribunal also took evidence from Ms Kinsey, who told the Tribunal that the relationship between the review applicant and the visa applicant is genuine. She said she has witnessed their relationship and its development. She said the parties lived together in Merrylands and that she has visited them there and they used to come to her place at Canley Heights. She said the review applicant is looking forward to his wife coming to Australia.
28. The Tribunal took further evidence from the review applicant and discussed with him concerns it has with the evidence, including inconsistent information regarding how the parties exchanged telephone numbers, when they first met up with each, their claim to have spent time in a hotel together and the marriage proposal, which the Tribunal explained may cast doubt on whether he and the visa applicant have provided truthful evidence about the commencement and development of their relationship and whether they are in a genuine and continuing relationship with each other as claimed. The Tribunal also discussed with the review applicant concerns about the limited evidence in relation to their claimed cohabitation at the Merrylands address, inconsistent information about the identities of the people that resided in Merrylands, limited evidence regarding the financial aspect of the parties' relationship and communication with one another, information from third parties indicating they had limited knowledge about the parties' relationship and evidence which suggests the visa applicant may still be in a relationship with her ex-husband.

29. *Consideration of the evidence*

30. In assessing the nature of the parties' relationship, the Tribunal has considered the evidence in its totality. The Tribunal acknowledges that there is some evidence which suggests that the parties may be in a genuine relationship, such as evidence of transfer of funds from the review applicant to the visa applicant in China, photographs of the parties together and with other people, supporting statements from third parties, Ms Kinsey's oral evidence, telephone records, evidence of the review applicant's travel to China on several occasions, including with the visa applicant when she departed Australia in October 2013. However, there were other aspects of the evidence which cast considerable doubt in the Tribunal's mind about the nature of the parties' relationship and the claim that they are in a genuine, continuing and exclusive relationship.
31. The Tribunal has considered the review applicant's responses to its concerns as follows.
32. The Tribunal has concerns about the evidence regarding when the parties first met and started communicating. In the relationship statement the parties indicated that the review applicant asked the visa applicant for her mobile number and continued to call her throughout the months of October and November 2012 until he successfully dated her. The decision record indicates that the parties gave inconsistent evidence at the interview about how they exchanged contact details. At the hearing, the review applicant told the Tribunal that he met visa applicant on the train and asked her for her number and whether she would like to go out on Saturday and that they exchanged telephone numbers and started communicating with each other. He told the Tribunal that he wrote down the visa applicant's number using a pen and that she recorded his number on her telephone. The visa applicant's evidence however indicated that it was the review applicant that recorded her

mobile number on his telephone. She also said that she did not take his number and that he kept calling her.

33. Although the visa applicant's evidence was somewhat consistent with the information in the relationship statement it was nevertheless inconsistent with the review applicant's evidence. When these inconsistencies were discussed with the review applicant at the hearing he stated that it was a long time ago and it was hard to remember entirely. The Tribunal does not consider that the length of time that has passed since the claimed event satisfactory explains why the parties' evidence at the Departmental interview, and the review applicant's evidence at the hearing, about how the parties exchanged numbers was inconsistent. The Tribunal formed the view that the parties were not being truthful about how they commenced communication with each other.
34. The Tribunal also has concerns about the evidence regarding when the parties first went out together. The statement indicated that the review applicant continued to call the visa applicant for two months before finally successfully dating her and that he took her to Olympic park to watch the motor racing. This was consistent to the visa applicant's oral evidence that they first went out together to Olympic park in December 2012. The decision record identifies numerous inconsistencies between the parties' evidence regarding the trip to Olympic park, including when the trip was organised and when the outing finished. At the hearing the review applicant told the Tribunal that they met up together only a few days later at his home in Cabramatta and that they went to Olympic park about two to three weeks after that.
35. In response to the concerns about the inconsistencies in the evidence provided in the written statement, at the Departmental interview and what he told the Tribunal at the hearing, the review applicant said that the first official date may have been to Olympic park. He said his wife is from Sichuan province in China and may not clearly understand the question regarding the first meeting. He said she was asked if they had met up before they went to Olympic park and maybe she did not consider that the call from him inviting her to his house was an official date event. He said he called her often in between. He said because the visa applicant's education level is low she may not have understood the Tribunal's question. The Tribunal is not satisfied that the visa applicant's lack of education or where she comes from in China explains the significant inconsistencies regarding the development of their relationship and whether the review applicant pursued the visa applicant for two months or they met up only a few days later. The Tribunal formed the view that the parties have not provided truthful evidence about the nature of their relationship and how it developed.
36. The Tribunal also had concerns about the parties' claim to have spent a night at a hotel on 9 December 2012. The decision record notes that at the Departmental interview the parties, although giving consistent evidence that they had gathered for a meal with the review applicant and his family before going to the hotel, there were numerous inconsistencies between their accounts of this event, including whose suggestion it was to go to the hotel, and how they got to and from the hotel. The parties also gave inconsistent evidence about when they left the hotel, with the visa applicant stating they left in the evening and returned to the review applicant's home for dinner after which she went home and the review applicant stating that they stayed at the hotel overnight and had breakfast together. At the hearing, the parties gave evidence that they stayed at the hotel on two occasions, the first time on 9 December 2012 and the second time a week later.
37. The Tribunal put its concerns about the inconsistent information as detailed above to the review applicant and noted the further inconsistencies that arose out of his evidence at the hearing, including that he and the visa applicant walked home from the hotel on the occasion they stayed overnight, which did not match any of the other versions previously provided by him or the visa applicant as detailed in the decision record. The review applicant told the

Tribunal that they did not stay at the hotel the first time but stayed overnight the second time. He said no one picked them up. The Tribunal is not satisfied with that explanation because, as explained to the review applicant at the hearing, the parties' evidence in the statement and at the Departmental interview referred to the night the spent together at the hotel and it does not find credible that he would provide evidence about the second claimed night at the hotel and not the first night. As explained to the review applicant at the hearing, the Tribunal considers that the parties have contrived their most recent evidence about going to the hotel on two occasions to try and explain the starkly inconsistent evidence about their claim to have spent time at a hotel together. The review applicant stated that he is 60 years of age and does not have many alternatives for marriage and is saying the truth. He said during the interview he was called at work and was wearing work clothes and had a lot of pressure to finish, also he is not young and his memory is not very good. The Tribunal is not satisfied that the applicant is telling the truth and is not satisfied that his age or the time he was called at work satisfactorily explains the significant inconsistencies in the evidence. The Tribunal is not satisfied that the parties spent any time together at a hotel in December 2012 as claimed and has formed the view that the parties contrived the evidence relating to this event.

38. As to their decision to marry, the Tribunal noted that there were some differences about how they made that decision. The statement indicated that after living together they were sure of their relationship and decided to get married. However, the review applicant told the Tribunal that he asked the visa applicant to marry him on a number of occasions and she told him not to rush it before finally accepting his proposal. The review applicant's response was that it is common sense that the visa applicant wanted to get married and was waiting for him to ask her. He said he was sure that he had formally asked her to marry him though he cannot recall the day. The Tribunal asked the review applicant why, if the visa applicant was sure of the relationship and wanted to get married, would she say no when he first asked her to marry him. He said she is a lady and pretended to not want to agree but actually she wants to get married. He said neither he nor his wife has a high education but they love each other. The Tribunal is not satisfied that the parties' level of education or that the visa applicant being a lady explains the inconsistencies relating to their decision to marry and whether the parties mutually decided to marry after living together or whether the visa applicant first refused to accept the review applicant's proposal. The Tribunal formed the view that the parties have not provided truthful evidence about the development of their relationship and their decision to marry.
39. The Tribunal put to the review applicant its concerns regarding their cohabitation and the financial aspects of their relationship. It noted that he and the visa applicant claim to have resided together in Australia from March 2013 to October 2013, however, there was limited evidence provided to indicate that they pooled their financial resources or shared household expenses. It noted that the parties did not have a joint bank account and that there was limited evidence regarding payment of bills and living expenses. In response, the review applicant stated that they did not have bills because they paid everything to the landlord. He said they went to the bank to open a joint bank account but were advised by the bank staff that their points were insufficient to open an account. The Tribunal expressed to the review applicant that it did not find his explanation credible because it is difficult to believe that they would go to the bank to open an account and not take with them sufficient identification documents. He then said he recalls taking his identification documents and passports but the bank said it was insufficient. The Tribunal noted that most people can usually open a bank account with a passport and asked if he made enquiries. He then said the bank officer had told him that because his wife had overstayed her visa in Australia and used to have a student guardian visa that she could not open a bank account. The Tribunal did not find the review applicant's explanations to be convincing and his varying explanations as why he and the visa applicant do not have a joint bank account cast doubt on his claim that they tried to open one.

40. The Tribunal put to the review applicant that at the Departmental interview he and the visa applicant did not provide consistent information about the identities of the people they lived with at the Merrylands house and that this raised concern about their claim to have resided together at Merrylands for the period claimed.
41. In response the applicant stated that there were a lot of people living at the house and it was not stable. He remembers the landlord Ke, and they had lunch and dinner together sometimes, and he does not think it is important to know the names of the people they lived with. The Tribunal is not satisfied with that explanation because it expects that if they had lived together for the period claimed, that they would have been able to provide consistent evidence about the people they lived with. The inconsistencies cast doubt over the parties' claim to have resided together at Merrylands from March 2013 to October 2013.
42. The Tribunal put the applicant its concerns regarding the knowledge of the relationship by family and friends. It noted that at the Departmental interview the visa applicant indicated that she had introduced him to two of her friends in China but that he had indicated that she had not introduced him to any of her friends in China and that he had only met her sister and two brothers. In response, the review applicant stated that on 25 December the visa applicant's friend had a party and took him to the party and maybe that is what she was referring to when she said she had introduced him to her friends. He said he met a couple in Guangdong. He said the Tribunal can call any of his friends to find out about his marriage to the visa applicant. The review applicant's evidence did not satisfactorily explain why the parties provided inconsistent evidence about whether or not the review applicant had been introduced to the visa applicant's friends in China.
43. The Tribunal did not consider that calling the applicant's friends at the hearing would have resolved the issues surrounding the inconsistent evidence provided at the time of interview which is relevant to whether the parties were in a spousal relationship at the time of application. Tribunal noted that while there may now be more evidence regarding their relationship, the Tribunal was concerned that at the time of the Departmental interview, which was some 10 months after the parties married, there was limited knowledge of their relationship by family and friends.
44. The Tribunal put to the applicant further concerns about evidence obtained during the Departmental interview from third parties, relatives of the visa applicant, which indicated they had limited knowledge about him and his relationship with the visa applicant. It noted that Ms Wang, with whom the visa applicant had been in recent contact and had seen on Chinese New Year 2014, suggested that Ms Wang was not aware of their relationship and that Ms Wang gave evidence that the visa applicant normally lives in the hometown of her ex-husband, that she is married with two children and that her mother-in-law is still alive (referring to her ex-husband's mother).
45. The Tribunal also noted that Mr Lu, her eldest brother, when contacted, indicated that the applicant sometimes live in lives Fuzhou by herself and at times lives with her son, the secondary applicant, at the home of his paternal grandparents, which is a home owned by her ex-husband. It noted that the information in the decision record also indicated Mr Lu had never met him and does not know his name. The Tribunal also noted that husband of the visa applicant's eldest sister, also named Mr Lu, when contacted did not know the review applicant's name and had never met him and was not able to provide further details of the surrounding circumstances.
46. The Tribunal put to the review applicant its concern that the lack of knowledge demonstrated by the visa applicant's relatives about him and the relationship indicates their relationship had limited recognition and that this may lead the Tribunal not to be satisfied that he and the

visa applicant were in a genuine spousal relationship and that the application may have been made for the purpose of securing a migration outcome for the visa applicant.

47. In response, the review applicant stated that it is understandable that Ms Wang did not know about the relationship because they married overseas in Australia. He said they are not young and it is not reputable to announce their relationship to family and friends so they kept their heads down. As for Mr Lu, who is the brother in law, he has met him when he returned to China and they now call each other brothers and do not refer to each other by name. He said he is sure that his wife has no relation with her ex-husband any more. He said he has photos of himself with the visa applicant's friends which he has provided.
48. The Tribunal has considered the review applicant's evidence but did not find the explanations that parties marrying in Australia or their age or that it is not reputable to announce their relationship, to be persuasive. By the time of the Departmental interview, the parties would have been married for a period of some 10 months. Furthermore, it was noted in the decision record that the review applicant had travelled with the visa applicant when she returned to China in October 2013. The Tribunal considers that if the parties were in a genuine, continuing and exclusive relationship as claimed then by the time of the Departmental interview Ms Wang would have had knowledge of the parties' marriage and relatives would have at least known the review applicant's name and able to provide more information about the relationship.
49. The Tribunal acknowledges that there is now more evidence before it indicating that family and friends of the visa applicant have knowledge of the relationship, including photographs of the review applicant with the visa applicant's family in China and statements from family and friends. The Tribunal notes however that most of those documents were provided after the application was refused by the Department. Furthermore, the material does not overcome the concerns that arose due to the evidence provided at the Departmental interview and at the hearing as detailed elsewhere in this decision.
50. The Tribunal has also considered the review applicant's explanation that his previous representative was not very good and that he had to get another representative because he did not get a good outcome, however, it is not satisfied that the applicant's claim of poor representation explains the numerous and significant concerns of the Tribunal as discussed elsewhere in this decision.
51. The Tribunal put to the applicant its concern that there was limited evidence of his and the visa applicant's communication with one another for the period from when she returned to China until they were interviewed by the Department. In response, the review applicant said the cost of calling China from Australia is expensive but that he currently has two cell phones and uses them to call her in China. The Tribunal has considered the review applicant's explanation but does not find credible that the review applicant had incurred the expense of travelling to China to be with the visa applicant in 2013, 2014 and 2015 yet considered it too expensive to communicate over the phone. The Tribunal acknowledges that the review applicant has now provided telephone records indicating the parties have been regularly communicating, however, most of those records postdate the decision to refuse the visa and do not overcome the concern regarding the parties' limited evidence of communications up until the visa refusal.
52. The Tribunal also had concerns regarding the address noted on the visa applicant's Hukou (household registration document) which still indicates the address of her ex-husband. When this concern was raised with the review applicant at the hearing he said it is not important and people use their ID card so many people do not update their Hukou. He said the visa applicant and her ex-husband are from the same village and that is why she did not update her address. The Tribunal has considered that explanation and while it may be plausible that

the visa applicant had not updated her address with the authorities, given the other concerns raised elsewhere in this decision, including the evidence from third parties about the visa applicant sometimes staying with her son at the home of her ex- husband's parents, the Tribunal has some concerns about whether the visa applicant may still have some relationship with her ex-husband and whether the parties have a mutual commitment to a shared life to the exclusion of all others.

53. The Tribunal has also had regard to the review applicant's evidence that has provided lots of evidence, such as phone records and other information, and for the Tribunal to consider the evidence overall and not focus on the inconsistencies as the delegate did. The Tribunal has considered the evidence overall and, as explained to the applicant at the hearing, if it was one or even a few inconsistencies which could be explained, then the Tribunal may not be so concerned, however, it was the combination and significance of the numerous inconsistencies in the evidence that cast doubt on the nature of the parties' relationship.
54. The Tribunal has considered the evidence overall and while it recognises that evidence has been provided indicating the parties are genuine and continuing relationship, the evidence did not overcome the serious concerns the Tribunal had about certain aspects of the parties' evidence as discussed above.
55. In relation to the financial aspects of the relationship, there is no evidence that the parties have any joint ownership of assets or any joint liabilities, or that they have any legal obligations to one another. The Tribunal accepts that the review applicant has transferred money to the visa applicant in China in March 2014, July 2015 and January 2016 as evidenced by the funds transfer documents. However, given the serious concerns outlined elsewhere in this decision, the Tribunal considers that the evidence of funds transfers may have been contrived for the purpose of the application. The parties claim to have lived together in Australia for 6 months but there was limited evidence that they pooled their financial resources or shared household expenses during that time and, as detailed above, the Tribunal did not find the review applicant's explanation for why the parties did not have a joint bank account to be convincing. The Tribunal is not satisfied that the financial circumstances demonstrates that the parties relationship were in a genuine and continuing relationship.
56. In relation to the nature of the parties' household, the parties claim to have spent time together in a hotel in December 2012. For the reasons detailed above, the Tribunal does not accept this occurred. Furthermore, no evidence has been provided, such as receipts evidencing any stays at a hotel as claimed. The parties claim to have lived together from March 2013 to October 2013 for 6 months in Merrylands, however, there was limited documentary evidence to demonstrate that the review applicant resided at the Merrylands address at the same time as the visa applicant. The review applicant's mobile phone statements shows the Merrylands address but only from October 2013, which is month the visa applicant departed Australia. Also, as discussed above, the parties gave inconsistent evidence about who lived at the Merrylands home. The Tribunal has considered Ms Kinsey evidence that she visited the parties at the Merrylands address and while that may indicate that the parties resided at the Merrylands, given the concerns detailed elsewhere in this decision, the Tribunal is not satisfied that they resided there for the period claimed or that they had established a household.
57. The Tribunal has considered the social aspects of the relationship. The Tribunal acknowledges the statements that have now been received from family and friends attesting to the genuineness of the parties' relationship. The Tribunal has also had regard to the photographs of the parties together and with family which were obtained during the review applicant's recent trips to China. However, the Tribunal considers that the statements and photographs were provided after the visa application had been refused and do not overcome

the adverse information obtained from third parties about their knowledge of the parties' relationship, as considered in detail above. The Tribunal is not satisfied that the social aspects of the relationship demonstrate that the parties were in a genuine and continuing relationship.

58. In considering the nature of the parties' commitment to each other, the Tribunal acknowledges the parties' evidence that they have known each other since October 2012, that they lived together for 6 months, that the review applicant has travelled to China on a number of occasions since the visa applicant's return to China and that the parties communicate by phone on a regular basis. Firstly, the Tribunal is not satisfied that the further evidence provided, including evidence of the review applicant's trips to China in the last three years, witness statements and telephone records, is evidence that at the parties were in a committed relationship at the time of the application. Secondly, the Tribunal has serious concerns, as discussed above, that the parties have not provided truthful evidence about the nature of their relationship, its development, experiences they claimed to have had and their claim to have lived together. The review applicant has not satisfactorily explained the concerns raised by the Tribunal, and the Tribunal is not satisfied that the additional evidence provided, most of which came to existence after the visa refusal, overcomes the Tribunal's concerns. For these reasons, the Tribunal is not satisfied that at the time of application the parties were in a committed relationship with each other.
59. For the above reasons, the Tribunal is not satisfied that at the time of application the parties had a mutual commitment to a shared life as husband and wife to the exclusion of all others, and that the relationship is genuine and continuing. The Tribunal is not satisfied that the parties lived together or did not live separately and apart on a permanent basis. The Tribunal therefore finds that the visa applicant does not meet the definition of 'spouse' in s.5F(2)(b)-(d).
60. Given these findings the Tribunal is not satisfied that the parties were in a spousal relationship. The requirement in cl.309.211(2) is therefore not met.
61. As the parties were married at the time of application, the visa applicant cannot satisfy cl.309.211(3).
62. Therefore the visa applicant does not meet cl.309.211.
63. The second named visa applicant is a member of the first named visa applicant's family. As the first named visa applicant does not satisfy the requirement for the grant of the visa, the second named visa applicant does satisfy the secondary criteria for the grant of the visa and the Tribunal must also affirm the decision in relation to him.
64. For the reasons above, the visa applicant does not satisfy the criteria for the grant of the visa.

DECISION

65. The Tribunal affirms the decisions not to grant the visa applicants Partner (Provisional) (Class UF) visas.

Rania Skaros
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).